

**DECISION**



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**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548**

**FILE:** B-203459

**DATE:** December 8, 1981

**MATTER OF:** Santo M. Lacagnina - Waiver of indebtedness

**DIGEST:** Employee with both regular and optional life insurance coverage transferred between agencies. New agency erroneously deducted for only regular life insurance which resulted in overpayment. Waiver of overpayment under 5 U.S.C. § 5584 is denied since employee is not free from fault by failing to examine personnel and payroll documents which would have revealed the error.

The issue in this decision is whether an overpayment resulting from the erroneous under deduction for life insurance premiums may be waived under 5 U.S.C. § 5584 (1976). We hold that where the employee, by examination of pertinent documents should have known of the error, he is not free from fault, and waiver must be denied.

This decision is in response to an appeal by Mr. Santo M. Lacagnina from our Claims Group determination (Z-2826004) denying his request for waiver of an overpayment resulting from the failure to deduct premiums for optional life insurance.

The failure to deduct premiums for optional insurance occurred when Mr. Lacagnina transferred from his position with the Department of the Navy in Gifu, Japan, to a position with the Defense Supply Agency (now Defense Logistics Agency) in Pasadena, California, effective July 2, 1972. Although Mr. Lacagnina had elected regular and optional life insurance in 1968, the Defense Supply Agency acknowledged only regular life insurance coverage on the Standard Form 50 issued upon his transfer, and the agency began deductions from his pay only for regular life insurance. The error was discovered in 1980, and the resulting overpayment was \$1,595.50.

Our Claims Group denied Mr. Lacagnina's request for waiver on the grounds that he received leave and earnings statements and copies of Standard Form 50's through which

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he could verify the entries concerning pay and employment information. Therefore, he is considered to be partially at fault and precluded from waiver.

On appeal Mr. Lacagnina argues that he did not notice the changed designation in block 9 of the Standard Form 50 issued by the Defense Supply Agency concerning life insurance coverage. In addition, he argues that he did not notice the change in deduction for life insurance because of a change in the format of the leave and earnings statement.

Under the provisions of 5 U.S.C. § 5584 (1976), collection of erroneous overpayments of pay to Federal employees may be waived when such collection would be against equity and good conscience and not in the best interests of the United States and only when there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining the waiver. See also 4 C.F.R. Part 91 (1981).

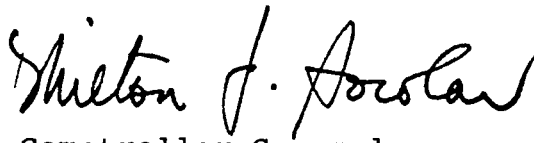
Where the employee knew, or should have known, that he was being overpaid, he is precluded from waiver because he is not without fault in continuing to accept the erroneous payments. Thomas O. Marshall, Jr., B-190564, April 20, 1978. If the employee has the necessary records which, if reviewed, would indicate the overpayment, then he is deemed to have constructive knowledge of the error by failing to review such documents for accuracy. Alfred H. Dube, B-198931, July 24, 1980.

In the present case there is no question that Mr. Lacagnina elected regular and optional life insurance coverage and that no change in coverage was intended upon his transfer from the Navy to the Defense Supply Agency. Mr. Lacagnina received copies of the Standard Form 50 effecting the transfer as well as subsequent SF-50's documenting reassignments in 1974, 1976, and 1979. The Standard Form 50 designates life insurance coverage (1-covered, regular only - declined optional; 2-ineligible; 3-waived; and 4 - covered regular optional), and each of the forms he received from the Defense Supply Agency was incorrectly marked "1."

Mr. Lacagnina also received Leave and Earnings Statements from the Navy and Defense Supply Agency which, if compared, would indicate that prior to his transfer his deductions for insurance were \$5.23 (regular) and \$5.50 (optional) but after transfer only \$5.23. We note that Leave and Earnings Statement issued by the Defense Supply Agency provided only one box for life insurance deductions instead of two boxes on the Navy statement. In addition, the first Leave and Earnings Statement issued by the Defense Supply Agency to Mr. Lacagnina was confusing since it represented 77 hours of work in one pay period plus 40 hours of work from a prior pay period. Nevertheless, the deduction for life insurance in this first statement (\$7.85) did not equal the sum of the two deductions from the Navy statement, and subsequent Leave and Earnings Statements from the Defense Supply Agency reflected deductions in the amount of only \$5.23.

Based on the above, we cannot say that Mr. Lacagnina was free from fault in this matter. We note also that collection would not be against equity or good conscience since the optional life insurance coverage continued during this period that no deductions were made. See 5 C.F.R. §§ 871.203 and 871.204 (1981), and Marshall, supra.

Accordingly, we sustain our Claims Group determination denying Mr. Lacagnina's request for waiver.

*for*   
Comptroller General  
of the United States